



## Flood Control District of Maricopa County

Date: February 16, 2016

To: Tom Manos, County Manager

Via: Joy Rich, AICP, Deputy County Manager *JR*

From: William D. Wiley, P.E., Chief Engineer & General Manager *WDW*

Re: Text Amendment FCD2016002 to Board of Hearing Review Procedures

In accordance with the adopted "Moratorium on Increased Regulatory Burdens," (C-44-13-104-M-00), the Flood Control District of Maricopa County requests your approval to pursue a text amendment to the Board of Hearing Review Procedures. The proposed amendment generally clarifies the procedures that are in place during an appeal before the Board of Hearing Review and will provide consistency between the procedures and changes in state law. Consistent with the moratorium, the amendment is proposed to clarify the procedures during an appeal to lessen the applicant's regulatory burden.

FCD2016002 will be processed through the County's Enhanced Regulatory Outreach Program. It is scheduled for a March 9, 2016 Stakeholder Workshop and presentation before the Flood Control Advisory Board on March 23, 2016.

Approved by:

A handwritten signature in black ink, appearing to read "Tom Manos".

Tom Manos, County Manager



# Flood Control District

## of Maricopa County

BRIEFING NOTIFICATION TO COUNTY MANAGER – FCD2016002

February 16, 2016

**Case/Title:** FCD2016002 – Board of Hearing Review Procedures

**Supervisor Districts:** All Districts

**Overview:** A text amendment to the Flood Control District Board of Hearing Review Procedures.

This text amendment will bring the Board of Hearing Review procedures into compliance with changed language in State law, and will add additional detail to the procedures that will clarify burden of proof and order of argument before the Board.

Background: Per State law and our Floodplain Regulations, the Flood Control District has an appeals process for floodplain violations and for damages to District facilities. This process includes an appeal board called the Board of Hearing Review. Per State Statute 48-3615.01.D, "...The Board of directors shall adopt written rules of procedure for the hearing and review of hearings. These rules shall be adopted in the same manner as floodplain ordinances."

Proposed verbatim language is attached (added language is underscored, deleted language is struck-through).

**Next Steps:** This text amendment will be processed using the Enhanced Regulatory Outreach Program. A stakeholder workshop is scheduled for March 9, 2016 and this text amendment will be presented at the March 23, 2016 Flood Control Advisory Board meeting.

**Attachment:** 2016 Draft Board of Hearing Review Procedures

Maricopa County Enhanced Regulatory Outreach Program Initialization Form		
Department: Flood Control District	Contact: Kelli Sertich	Date Entered in Process: February 16, 2016
Item Name and Number: FCD2016002 – Text Amendment to Board of Hearing Review Procedures		

Step No.	Process	Date	Comments
1	County Manager brief Board of Directors	By February 24, 2016	
2	Notification Two Weeks Prior to Stakeholder Workshop	February 24, 2016	Notice via County web page and stakeholder list
3	Stakeholder Workshop	March 9, 2016	Review proposed changes with stakeholders.
4	Notification Two Weeks Prior to Citizens' Board Meeting	March 9, 2016	Notice/staff report via County web page, stakeholder list, and advisory board agenda
5	Public Meeting to Initiate Regulatory Change	March 23, 2016	Flood Control Advisory Board Meeting
6	Specific departmental processes	To be determined	Staff will review and recommend revisions to the proposed language based upon any public input.
7	Public hearing to make recommendation to BOS	April 27, 2016	Flood Control Advisory Board Public Hearing. Stakeholder notification on or before April, 13, 2016.
8	Board of Director's Sets Hearing Date for 30 Day Public Notice	May 18, 2016	Board of Director's meeting
9	Board of Directors Public Hearing	June 22, 2016	Board of Director's meeting
10	Item Adopted	June 22, 2016	Publish copy of amended Board of Hearing Review Procedures to County web site

## Exhibit A

### Board of Hearing Review Procedures

- A. The review shall be limited to the record of proceedings before the Hearing Officer and no new evidence shall be introduced. The record of proceedings shall include all pleadings and orders in the Hearing Officer's file, copies of all evidence submitted at the hearing, a copy of the audiotape of the hearing and a copy of the Chief Engineer's final decision and order, and any prior orders of the Board of Hearing Review or a reviewing court. If the Board of Hearing Review determines that a transcript of the audiotape is necessary, a transcript shall be prepared at the District's expense. A trial *de novo* is not permitted.
- B. The written request for review by the Board of Hearing Review of the Chief Engineer's decision and order ~~by the Board of Hearing Review~~ shall be delivered to the Clerk of the Board of Directors within fifteen (15) days after the date of the ~~final~~ Chief Engineer's decision and order.
- C. Within thirty (30) calendar days of ~~Upon~~ receipt of the written request for review, the Chief Engineer shall, ~~within thirty (30) calendar days~~, prepare and transmit the complete record to the clerk of the Board of Hearing Review and schedule the request for review to be heard by the Board.
- D. Not fewer than ten (10) working days prior to the date of the hearing, the ~~The~~ clerk of the Board of Hearing Review shall notify all parties of the date, time, and place of the ~~request for review~~ hearing by certified mail to the last known address of the parties, ~~at least ten (10) working days prior to the date of the hearing.~~
- E. The Chairperson of the Board of Hearing Review, or designee, shall preside at all ~~request for review~~ hearings and shall decide on all questions pertaining to procedure. When appropriate, the Chairperson may issue a prehearing order providing guidance to the parties on the conduct of the hearing.
- F. Each party shall be allowed ~~ten~~ five minutes to present oral arguments. Time limits may be extended at the discretion of the Chairperson or Board.
- G. ~~Each~~ All members of the Board and Board counsel may question all parties appearing before them.
- H. The findings of fact of the Hearing Officer and conclusions of law accepted by the Chief Engineer shall carry with them a rebuttable presumption of validity. The party requesting review before the Board of Hearing Review shall bear the burden of demonstrating by a preponderance of the evidence that either these findings of fact or conclusions of law are arbitrary, capricious, unreasonable or unsubstantiated by the record established before the Hearing Officer. As to any penalty imposed by the Chief Engineer, the Chief Engineer shall bear the burden of persuasion that the penalty is just and equitable under the circumstances. Once that initial burden is met,



the party requesting review before the Board of Hearing Review shall bear the burden of demonstrating that the penalty imposed is unjust and/or inequitable under the circumstances or is inconsistent with the law.

I.H. Based on the record before the Board of Hearing Review, the Board of Hearing Review may deny, approve, modify or return to the Chief Engineer for further consideration, the order of the Chief Engineer or the order of the Hearing Officer. The Board of Hearing Review shall issue a written order of its decision including findings of fact and conclusions of law, and shall submit its final written order on the matter to the Chief Engineer within thirty days after completion of the hearing. The decision of the Board of Hearing Review shall be decided by majority vote of the participating members. Copies of the order shall be served on all parties to the hearing.  
~~The decision to uphold or deny the Chief Engineer's final decision and order shall be decided upon by motion and a majority vote of the members of the Board of Hearing Review.~~

I.I. The final decision of the Board of Hearing Review is subject to judicial review pursuant to A.R.S. Title 12, Chapter 7, Article 6.

#### Appendix

##### Typical Order of Argument Before the Board

Except as otherwise provided by order of the Chairperson under Section E or by the Board, the order of argument before the Board of Hearing Review shall be as follows:

Representatives of each party may submit a brief, not to exceed 10 pages in length, to the clerk of the Board of Hearing Review not less than five days before the hearing to assist the Board in understanding their arguments. The clerk will promptly distribute copies to the Board and Board counsel.

The representative of the party seeking review of the decision and order of the Chief Engineer or Hearing Officer shall speak first and present argument as to why the decision and order of the Chief Engineer or Hearing Officer is in error and should be denied or modified. The representative of the party requesting review may, with the approval of the Chairperson, reserve time for rebuttal. Board members or Board counsel may ask questions.

The representative of any other party properly admitted to the hearing shall speak next and present argument as to why the decision and order of the Chief Engineer or Hearing Officer should be approved, denied, or modified. If there are multiple such parties, they shall speak in an order determined by the Chairperson. Board members or Board counsel may ask questions.

The representative of the flood control district shall speak after all other parties and present argument as to why the decision and order of the Chief Engineer or Hearing Officer should be approved. Board members or Board counsel may ask questions.

The representative of the party requesting review may, if time was reserved for rebuttal, present rebuttal solely to argument presented by another party. Board members or Board counsel may ask questions.

Following presentation of all argument, the Board Chairperson, or designee, will enquire of Board members and Board counsel whether there are any additional questions. When appropriate, all parties may be invited to provide responses to questions.

The Chairperson, or designee, will ask the Board members and Board counsel if executive session is needed. If so, the Board will retire to hear advice of counsel.

Following executive session, if any, the Board will deliberate. The Board may make a decision, ask Board counsel to research and/or draft a decision, or take the matter under advisement or any combination of the above. Upon deciding what action it is taking, the Board will adjourn until it is ready to complete its deliberations and adopt an order. Notice will be provided of such time to the parties at least 10 days in advance, unless the parties agree on the record to a different schedule.